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In re Application of
FOCKE, Heinz et al.
Application No.: 10/521,000
PCT No.: PCT/EP03/08029
Int. Filing Date: 23 July 2003
Priority Date: 31 July 2002
Attorney's Docket No.: 20605.018US
For: FOLDING PACKET

DECISION ON
REQUEST
UNDER 37 CFR 1.42

This application is before the Office of PCT Legal Administration for matters arising under 35 USC 371. A review of the declaration reveals an indication that joint inventor Heinz Focke is deceased. Applicants' submission has been treated as a request for status under 37 CFR 1.42.

BACKGROUND

On 07 January 2005, applicants filed international application PCT/EP03/08029, which claimed a priority date of 31 July 2002. A copy of the international application was transmitted to the Office by the International Bureau on 12 February 2004. The deadline for entry into the national stage in the United States was 31 January 2005.

On 07 January 2005, applicants filed a submission for entry into the national stage in the United States which was accompanied by, *inter alia*, the U.S. Basic National Fee.

On 27 June 2005, the Office mailed Notification of Missing Requirements (Form PCT/DO/EO/905) indicating that an oath or declaration in compliance with 37 CFR 1.497(a)-(b) was required.

On 05 July 2005, applicants submitted a declaration executed by two inventors and two heirs of deceased inventor Focke.

DISCUSSION

Under 35 U.S.C. §117, legal representatives of deceased inventors may make application for patent upon compliance with the requirements and on the same terms and conditions applicable to the inventor. The "legal representative (executor, administrator, etc.) of the deceased inventor may make the necessary oath or declaration, and apply for and obtain the patent." 37 CFR 1.42.

The declaration is executed by Jürgen Focke and Doris Focke. The declaration provided does not state that the heirs are the sole heirs of Heinz Focke. If a legal representative has been or is required to be appointed under applicable law, such person must sign the declaration and indicate the relationship, e.g., "legal representative of inventor Heinz Focke." Otherwise, all heirs of Heinz Focke must sign the declaration and indicate the relationship, e.g., "all heirs of Heinz Focke" or "legal representative of Heinz Focke." The indication that Jürgen Focke and Doris Focke are heirs leaves open the possibility that there are other non-signing joint heirs.

Additionally, the declaration must list the inventors and their citizenships and the legal representative and the legal representative's citizenship, residence and postal address. See 37 CFR 1.497. The declaration appears to list the information for the heirs and the remaining inventors, but does not list the information for the deceased inventor. As such, it does not satisfy 37 CFR 1.497(a)-(b).

CONCLUSION

For the above reasons, the request for status under 37 CFR 1.42 is **REFUSED**.

Applicant is required to submit a declaration in compliance with 37 CFR 1.497 and 1.42 within a time period of **TWO (2) MONTHS** from the mail date of this Decision. **THIS PERIOD FOR RESPONSE MAY BE EXTENDED UNDER 37 CFR 1.136(a). FAILURE TO PROPERLY RESPOND WILL RESULT IN ABANDONMENT.** Any request for reconsideration of this decision should include a cover letter entitled "Renewed Submission Under 37 CFR 1.42."

Any further correspondence with respect to this matter should be addressed to the Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.



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